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IN THE CRIMINAL COURT OF RECORD, of the County of Orange and the State of Florida, in the year of our Lord one thousand nine hundred and sixty-four.

STATE OF FLORIDA

v.

HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS, CLYDE FRANKLIN LEE, alias J. MARTIN alias JACK MARTIN, DOROTHEA HOWELL RADFORD, CECIL ST. CLAIR MERRITT, GLEN DULIN BRECHEEN, KATHRYN BRADSHAW, MACON TRIBUE, and GERTRUDE LOCKE

INFORMATION FOR

(1) CONSPIRACY

(2) LOTTERY LAW VIOLATIONS

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA

JAMES M. RUSS, County Solicitor, for the County of Orange, prosecuting for the State of Florida, in the said County, under oath, charges that HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS, CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, DOROTHEA HOWELL RADFORD, CECIL ST. CLAIR MERRITT, GLEN DULIN BRECHEEN, KATHRYN BRADSHAW, MACON TRIBUE and GERTRUDE LOCKE, in Orange County, Florida, Seminole County, Florida, Polk County, Florida, and divers other places unknown to the Solicitor, on July 27, 1963, and on divers and sundry times and occasions thereafter between July 27, 1963, and August 10, 1963, inclusive, in violation of Section 833.04, Florida Statutes, did unlawfully agree, conspire, combine, and confederate with one another and together, and with the following persons who are co-con-

spirators but not defendants: a certain male person called "Lewis" utilizing Haines City, Florida, telephone numbered 422-4092 who is believed to be named "Willie Lewis"; William Brown alias Fox; a certain male person called "Honey" utilizing Sanford, Florida, telephone numbered 323-0439 who is believed to be named "Willie Dubose"; a certain female person utilizing Sanford, Florida, telephone numbered 323-0439 who is believed to be named "Emily Mae Dubose"; a certain male person utilizing Orlando, Florida, telephone numbered 423-2867 who is believed to be named "Johnnie L. Brown"; and a certain female person utilizing Orlando, Florida, telephone numbered 423-2867 who is believed to be named "Louise Brown"; a more particular and exact identification of said co-conspirators being unknown to the Solicitor, to commit the felonies of promoting and conducting a lottery for money, and the felonies of aiding and assisting in the promoting and conducting of a lottery for money in the following manner:

A. By equipping and maintaining check-up houses at various locations in Orange County, Florida, Seminole County, Florida, and divers other places unknown to the Solicitor, in connection with and support of a lottery for money commonly known as "Bolita", "Cuba" and "Bond" during the time period between July 27, 1963, and August 10, 1963, inclusive.

B. By transmitting betting information and equipment connected with a lottery for money commonly known as "Bolita", "Cuba" and "Bond" among writers or sellers, pick-up men, check-up house operators, and the banker in Orange County, Florida, Seminole County, Florida, Polk County, Florida, and divers other places unknown to the Solicitor, during the time period between August 2, 1963, and August 10, 1963, inclusive.

C. By transmitting the results on a lottery for money commonly known as "Bolita", "Cuba" and "Bond"

among writers or sellers, pick-up men, check-up house operators, and the banker in Orange County, Florida, Seminole County, Florida, Polk County, Florida, and divers other places unknown to the Solicitor, during the time period between August 2, 1963, and August 10, 1963, inclusive.

D. By servicing a group of writers or sellers of lottery tickets and shares and rights in a lottery scheme, the aforesaid lottery being for money and commonly known as "Bolita", "Cuba" and "Bond", in Orange County, Florida, Seminole County, Florida, Polk County, Florida, and divers other places unknown to the Solicitor, during the time period between August 2, 1963, and August 10, 1963, inclusive.

COUNT TWO

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS, CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, DOROTHEA HOWELL RADFORD, CECIL ST. CLAIR MERRITT, GLEN DULIN BRECHEEN, KATHRYN BRADSHAW, MACON TRIBUE and GERTRUDE LOCKE, on July 27, 1963, and on divers and sundry times and occasions thereafter between July 27, 1963, and August 10, 1963, inclusive, in Orange County, Florida, Seminole County, Florida, Polk County, Florida, and divers other places unknown to the Solicitor, did unlawfully promote a lottery for money commonly known as "Bolita", "Cuba" and "Bond".

COUNT THREE

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS, CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, DOROTHEA HOWELL RAD-

FORD, CECIL ST. CLAIR MERRITT, GLEN DULIN BRECHEEN, KATHRYN BRADSHAW, MACON TRIBUE and GERTRUDE LOCKE, on July 27, 1963, and on divers and sundry times and occasions thereafter between July 27, 1963, and August 10, 1963, inclusive, in Orange County, Florida, Seminole County, Florida, Polk County, Florida, and divers other places unknown to the solicitor, did unlawfully conduct a lottery for money commonly known as "Bolita", "Cuba" and "Bond".

COUNT FOUR

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS, CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, DOROTHEA HOWELL RADFORD, CECIL ST. CLAIR MERRITT, GLEN DULIN BRECHEEN, KATHRYN BRADSHAW, MACON TRIBUE and GERTRUDE LOCKE, on July 27, 1963, and on divers and sundry times and occasions thereafter between July 27, 1963, and August 10, 1963, inclusive, in Orange County, Florida, Seminole County, Florida, Polk County, Florida, and divers other places unknown to the Solicitor, did unlawfully aid and assist in the promoting of a lottery for money commonly known as "Bolita", "Cuba" and "Bond".

COUNT FIVE

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS, CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, DOROTHEA HOWELL RADFORD, CECIL ST. CLAIR MERRITT, GLEN DULIN BRECHEEN, KATHRYN BRADSHAW, MACON TRIBUE and GERTRUDE LOCKE, on July 27, 1963, and on divers and sundry times and occasions thereafter be-

tween July 27, 1963, and August 10, 1963, inclusive, in Orange County, Florida, Seminole County, Florida, Polk County, Florida, and divers other places unknown to the Solicitor, did unlawfully aid and assist in the conducting of a lottery for money commonly known as "Bolita", "Cuba" and "Bond".

COUNT SIX

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN and DOROTHEA HOWELL RADFORD, on August 10, 1963, in Orange County, Florida, were then and there unlawfully interested in and connected with a lottery for money commonly known as "Bolita", "Cuba" and "Bond", by then and there unlawfully having in their possession implements and devices connected with said lottery, to wit: adding machines, a radio, currency of the United States of America, a telephone, pads of paper, pencils, money wrappers, stapler, and paper clips.

COUNT SEVEN

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN and DORETHEA HOWELL RADFORD, on August 10, 1963, in Orange County, Florida, did unlawfully have in their possession implements and devices for conducting a lottery for money commonly known as "Bolita", "Cuba" and "Bond", to wit: adding machines, a radio, currency of the United States of America, a telephone, pads of paper, pencils, money wrappers, stapler, and paper clips.

COUNT EIGHT

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that

HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS, CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, CECIL ST. CLAIR MERRITT, KATHRYN BRADSHAW and GERTRUDE LOCKE, on August 2, 1963, in Orange County, Florida, Seminole County, Florida, Polk County, Florida, and divers other places unknown to the Solicitor, did then and there unlawfully and knowingly use private wires, to wit: telephones, in the dissemination of information concerning a lottery for money commonly known as "Bolita", "Cuba" and "Bond", in furtherance of gambling and for gambling purposes.

COUNT NINE

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, CECIL ST. CLAIR MERRITT, GLEN DULIN BRECHEEN, and KATHRYN BRADSHAW, on August 5, 1963, in Orange County, Florida, Seminole County, Florida, and divers other places unknown to the Solicitor, did then and there unlawfully and knowingly use private wires, to wit: telephones, in the dissemination of information concerning a lottery for money commonly known as "Bolita", "Cuba" and "Bond", in furtherance of gambling and for gambling purposes.

COUNT TEN

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, CECIL ST. CLAIR MERRITT, and GLEN DULIN BRECHEEN on August 6, 1963, in Orange County, Florida, Seminole County, Florida, and divers other places unknown to the Solicitor, did then and there unlawfully and knowingly use private wires, to wit: telephones, in the dissemination of information concerning a

lottery for money commonly known as "Bolita", "Cuba" and "Bond", in furtherance of gambling and for gambling purposes.

COUNT ELEVEN

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS, CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, CECIL ST. CLAIR MERRITT, and GLEN DULIN BRECHEEN, on August 7, 1963, in Orange County, Florida, Seminole County, Florida, and divers other places unknown to the Solicitor, did then and there unlawfully and knowingly use private wires, to wit: telephones, in the dissemination of information concerning a lottery for money commonly known as "Bolita", and "Bond", in furtherance of gambling and for gambling purposes.

COUNT TWELVE

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS, CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN, CECIL ST. CLAIR MERRITT and GLEN DULIN BRECHEEN on August 8, 1963, in Orange County, Florida, Seminole County, Florida, and divers other places unknown to the Solicitor, did then and there unlawfully and knowingly use private wires, to wit: telephones; in the dissemination of information concerning a lottery for money commonly known as "Bolita" and "Bond", in furtherance of bambling and for gambling purposes.

COUNT THIRTEEN

And your Solicitor prosecuting for the State of Florida in the County of Orange, under oath, further charges that

CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN and CECIL ST. CLAIR MERRITT on August 10, 1963; in Orange County, Florida, and divers other places unknown to the Solicitor, did then and there unlawfully and knowingly use private wires, to wit: telephones, in the dissemination of information concerning a lottery for money commonly known as "Cuba", in furherance of gambling and for gambling purposes, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Florida.

/s/ James M. Russ
County Solicitor,
Orange County, Florida

State of Florida
County of Orange

Personally appeared before me, JAMES M. RUSS, County Solicitor for Orange County, Florida, who, being first duly sworn, says the allegations, as set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this 6th day of February, A.D. 1964.

/s/ Leon Tschiedel
Notary Public, State of Florida at Large. My Commission expires January 19, 1968.

DIRECT

No. 96864

DIVISION B

CRIMINAL COURT OF RECORD
ORANGE COUNTY

STATE OF FLORIDA

THE STATE OF FLORIDA

v.

HARLAN ALEXANDER BLACKBURN alias THOMAS DAVIS; CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN; DOROTHEA HOWELL RADFORD; CECIL ST. CLAIR MERRITT; GLEN DULIN BRECHEEN; KATHRYN BRADSHAW; MACON TRIBUE and GERTRUDE LOCKE

INFORMATION FOR

(1) CONSPIRACY

(2) LOTTERY LAW VIOLATIONS

[Filed in Office, Criminal Court of Record and County Court, Orange Co., Fla., Feb. 6, 4:51 P.M., '64, Chas. E. Limpus, Clerk]

State of Florida
County of Orange

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for the County and State aforesaid, certify that this paper is a true and correct copy of the original information filed in my office in the case of the State of Florida vs. .....

. IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office this ..... day of ....., ... A.D. 19.....

CHAS. E. LIMPUS
Clerk of the Criminal Court of Record.

By ..... D. C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

Case No. 96864

Charge: Count One: Conspiracy

STATE OF FLORIDA

v.

CLYDE FRANKLIN LEE alias J. MARTIN, alias JACK MARTIN

Now on this day came in person the Defendant Clyde Franklin Lee in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Clyde Franklin Lee, having been tried and convicted at this term of court to the crime of Conspiracy as charged in the first Count ..... of the Information, the

Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgment, order and sentence of the Court that you, Clyde Franklin Lee, for the crime of which you have been and stand convicted, as charged in the first Count ..... of the Information, be imprisoned by confinement at hard labor for ONE (1) YEAR in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon CLYDE FRANKLIN LEE, in Case No. 96864, as recorded in Minute Book No. 2, Page 5, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS,
Clerk of Criminal Court of Record

By: ..... D. C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

Case No. 96864

Charge: Count Five: Violation of Lottery Law

STATE OF FLORIDA

v.

CLYDE FRANKLIN LEE alias J. MARTIN,
alias JACK MARTIN

Now on this day came in person the Defendant Clyde Franklin Lee in open Court, and having been asked by

the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Clyde Franklin Lee, having been tried and convicted at this term of court to the crime of Violation of Lottery Law as charged in the fifth Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgment, order and sentence of the Court that you, Clyde Franklin Lee, for the crime of which you have been and stand convicted as charged in the fifth Count ..... of the Information, be imprisoned by confinement at hard labor for FIVE (5) YEARS in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon CLYDE FRANKLIN LEE, in Case No. 96864, as recorded in Minute Book No. 2, Page 5, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS,
Clerk of Criminal Court of Record

By: ..... D. C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

Case No. 96864

Charge: Count One: Conspiracy

STATE OF FLORIDA

v.

CECIL ST. CLAIR MERRITT

Now on this day came in person the Defendant Cecil St. Clair Merritt in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Cecil St. Clair Merritt, having been tried and convicted at this term of court to the crime of Conspiracy as charged in the first Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgment, order and sentence of the Court that you, Cecil St. Clair Merritt, for the crime of which you have been and stand convicted, as charged in the first Count ..... of the Information, be imprisoned by confinement at hard labor for ONE (1) YEAR in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon CECIL ST. CLAIR

MERRITT, in Case No. 96864, as recorded in Minute Book No. 2, Page 5 and 6, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS,
Clerk of Criminal Court of Record

By: ..... D. C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

Case No. 96864

Charge: Count Five: Violation of Lottery Law

STATE OF FLORIDA

v.

CECIL ST. CLAIR MERRITT

Now on this day came in person the Defendant Cecil St. Clair Merritt in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Cecil St. Clair Merritt, having been tried and convicted at this term of court to the crime of Violation of Lottery Law as charged in the fifth Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgment, order and sentence of the Court that you, Cecil St. Clair Merritt, for the crime of which you have been and stand convicted, as charged

in the fifth Count ..... of the Information, be imprisoned by confinement at hard labor for THREE (3) YEARS in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon CECIL ST. CLAIR MERRITT, in Case No. 96864, as recorded in Minute Book No. 2, Page 5 and 6, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS,
Clerk of Criminal Court of Record

By: ..... D. C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

Case No. 96864

Charge: Count One: Conspiracy

STATE OF FLORIDA

v.

GLEN DULIN BRECHEEN

Now on this day came in person the Defendant Glen Dulin Brecheen in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Glen Dulin Brecheen, having been tried and convicted at this term of court to the crime of Conspiracy as charged in the first Count ..... of the Information,

the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgment, order and sentence of the Court that you, Glen Dulin Brecheen, for the crime of which you have been and stand convicted, as charged in the first Count ..... of the Information, be imprisoned by confinement at hard labor for ONE (1) YEAR in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon GLEN DULIN BRECHEEN, in Case No. 96864, as recorded in Minute Book No. 2, Page 5 and 6, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS,
Clerk of Criminal Court of Record

By: ..... D. C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

Case No. 96864

Charge: Count Five: Violation of Lottery Law

STATE OF FLORIDA

v.

GLEN DULIN BRECHEEN

Now on this day came in person the Defendant Glen Dulin Brecheen in open Court, and having been asked by

the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Glen Dulin Brecheen, having been tried and convicted at this term of court to the crime of Violation of Lottery Law as charged in the fifth Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgment, order and sentence of the Court that you, Glen Dulin Brecheen, for the crime of which you have been and stand convicted, as charged in the fifth Count ..... of the Information, be imprisoned by confinement at hard labor for THREE (3) YEARS in the state penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon GLEN DULIN BRECHEEN, in Case No. 96864, as recorded in Minute Book No. 2, Page 5 and 6, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS,
Clerk of Criminal Court of Record

By: ..... D. C.

IN THE CRIMINAL COURT OF RECORD
IN AND FOR ORANGE COUNTY, FLORIDA

Information No.

STATE OF FLORIDA,
Plaintiff,

v.

CLYDE FRANKLIN LEE, GLEN BRECHEEN, CECIL MERRITT,
Defendants.

MOTION FOR NEW TRIAL

Comes now the defendants jointly and severally and move the Court to grant each of them a new trial and for grounds therefore say:

1. The verdict is contrary to the evidence.

2. The verdict is contrary to the law.

3. The Court erred in denying defendants motion for a mis-trial during the progress of the trial.

4. The Court erred in denying Defendants motion for directed verdict.

5. As to the defendant CLYDE FRANKLIN LEE, the Court erred in admitting the articles taken from the defendant CLYDE FRANKLIN LEE at the time he was arrested at 411 Manor Road.

6. The Court erred in admitting the testimony of the several witnesses who testified concerning conversations overheard on the telephone.

7. As to the defendants GLEN BRECHEEN AND CECIL MERRITT, no testimony was offered that their alleged conversations were had with the defendant CLYDE FRANKLIN LEE within the jurisdiction of this Court.

8. As to the defendants GLEN BRECHEEN and CECIL MERRITT, the State failed to prove venue.

9. The Court erred in admitting evidence seized at 411 Manor Road on grounds that it was taken as a result of unlawful, unreasonable search and seizure and for such other and further grounds as a reading of the transcript of record will reveal.

WHEREFORE, Defendants respectfully move the Court to grant the Motion for New Trial.

/s/ Edward R. Kirkland
EDWARD R. KIRKLAND
140 South Court Street
Orlando, Florida
Attorney for Defendants

I HEREBY CERTIFY that copy hereof has been furnished to Hon. James Russ, County Solicitor, Orange County, Orlando, Florida, this 2nd day of July, 1964.

/s/ Edward R. Kirkland
Attorney

FILED:
July 2nd, 1964
CHAS. E. LIMPUS, CLERK

IN THE CRIMINAL COURT OF RECORD
IN AND FOR ORANGE COUNTY, FLORIDA

Case No. 96864

STATE OF FLORIDA,
Plaintiff,

v.

CLYDE FRANKLIN LEE alias J. MARTIN alias JACK MARTIN; GLEN DULIN BRECHEEN; CECIL ST. CLAIR MERRITT,
Defendants.

ORDER

A Motion for New Trial on behalf of EACH Defendant having been filed herein on July 2nd, 1964, by Counsel for Defense, said Motion came on at this time to be heard. Upon Stipulation of Counsel for State and Counsel for Defendants, it was Ordered that Paragraph # 3 of said Motion be, and it is hereby, amended by substituting the word "mis-trial" for the words, "new trial". Following arguments, the Motion was Denied as to EACH Defendant.

Entered in Minute Book No. 2,
Page No. 5, this the 21st day
of July, A.D., 1964.

IN THE CRIMINAL COURT OF RECORD
IN AND FOR ORANGE COUNTY, FLORIDA

Information No. 96864

STATE OF FLORIDA,
Plaintiff,

v.

CLYDE FRANKLIN LEE, GLEN DULEN BRECHEEN,
CECIL ST. CLAIR MERRITT,
Defendants.

ASSIGNMENT OF ERRORS

Come now the above named defendants and say that there is manifest error in the records, proceedings, verdict and judgment of the lower court in regard to defendants' trial in this, to-wit:

1. The Court erred in denying defendants' Motion for New Trial.

2. The Court erred in denying defendants' Motion for Directed Verdict.

3. The Court erred in admitting testimony of the various witnesses concerning evidence obtained by interception or tapping of the line of the defendant Clyde Franklin Lee.

4. The Court erred in denying defendants' Motion for Mis-trial.

5. The Court erred in admitting the evidence obtained as the result of a search of the premises occupied by the defendant Clyde Franklin Lee.

6. The Court erred in admitting into evidence certain articles seized as the result of unreasonable and unlawful search and seizure which said articles were not contra-

band and were purely personal papers and effects of the defendant Clyde Franklin Lee.

7. The Court erred in admitting testimony of various witnesses concerning voice identification of the defendants on the grounds that said testimony was based upon and obtained as the result of an unlawful and unreasonable search and seizure and contrary to the defendants rights under the Constitution of the United States and Declaration of Rights of the State of Florida.

8. The Court erred in admitting each and every exhibit marked and filed as State's Exhibit.

WHEREFORE, the Defendants pray that the judgment and sentence may be reversed.

/s/ Edward R. Kirkland
EDWARD R. KIRKLAND
140 South Court Street
Orlando, Florida
Attorney for Defendants

I HEREBY CERTIFY that copy hereof has been furnished to Hon. James G. Horrell, County Solicitor, by mail, this 26th day of July, 1965.

/s/ Edward R. Kirkland
Attorney

FILED: July 26th, 1965
CHAS. E. LIMPUS, CLERK

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

FOURTH DISTRICT

JULY TERM 1966

Case No. 36.

CLYDE FRANKLIN LEE, GLEN DULEN BRECHEEN and CECIL ST. CLAIR MERRITT,

Appellants,

v.

STATE OF FLORIDA,

Appellee.

Received Sep. 22, 1966, Edward R. Kirkland, Attorney at Law

Opinion filed September 21, 1966.

Appeal from the Criminal Court of Record for Orange County; Walter N. Burnside, Jr., Judge.

Edward R. Kirkland of Kirland Johnson Smith & Ervin, Orlando, and William A. Harmening, Winter Park, for appellants.

Earl Faircloth, Attorney General, Tallahassee, and William D. Roth, Assistant Attorney General, Lakeland, for appellee.

FUSSELL, CARROLL W., Associate Judge.

Defendants appeal from their conviction for a violation of the lottery laws. Their principal contention is that the lower court committed an error in permitting taped recordings of a telephone conversation to be introduced into

evidence at the trial. They maintain that these recordings were the result of wiretapping and are illegal and inadmissible in evidence.

The law on wiretapping in Florida was most thoroughly and clearly stated by Judge Carroll in Griffith v. State, Fla.App.1959, 111 So.2d 282, which was later followed and re-affirmed in Barber v. State, Fla.App.1965, 172 So. 2d 857. Certiorari was denied by the Supreme Court in each of these two cases.

In the Griffith case, supra, the court observed that under the common law and general rule wiretapped evidence was admissible, and that, in order to change this rule, either a state or federal statute would be required or there must be a state or federal constitutional inhibition or the court must determine that wiretapping was in violation of the general principle of law.

In the Griffth case, supra, it was further determined that there were no state or federal statutes applicable in Florida which would make wiretapping illegal and inadmissible in evidence, but that wiretapping is illegal in Florida because it does violate Section 12 of the Declaration of Rights of the Florida Constitution, which provides:

> "Section 12 . . . No person shall be . . . compelled in any criminal case to be a witness against himself . . . ."

and also violated Section 22 of the Declaration of Rights of the Florida Constitution, which provides:

> "Section 22 . . . The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated . . . ."

The first case in Florida dealing with this subject was Perez v. State, Fla.1955, 81 So.2d 201, decided by the Supreme Court of Florida. In this case an informant purchased a lottery ticket over the telephone while an officer

listened over an extension phone. The court held that this was sufficient as a basis for the officer to make his application for a search warrant.

The next case was Williams v. State, Fla.App.1959, 109 So.2d 379, decided by the Second District Court of Appeal. In this case the sheriff rented a party line and the deputy sheriff listened and recorded the conversations of the defendant thereon. The defendant had been told that the party line was being rented by a colored family, and the defendant did not know that the sheriff had rented the line. Recorded evidence of these conversations was held admissible.

The next case was the Griffith case, supra, decided by the First District Court of Appeal. In this case the officer rented a party line and then fixed it so that he could attach a long line to it and walk around the room without standing by the telephone at all times. Under this arrangement there was no tapping sound which would give alarm to the defendant that his conversation was being listened to. This was held not to be an illegal wiretap, and the officer was permitted to testify.

The last case, Barber v. State, Fla.App.1965, 172 So.2d 857, was also decided by the First District Court of Appeal. In this case a tape recording of a telephone conversation of the defendant with the prosecuting witness was admitted in evidence over the objection of the defendant that it was the result of wiretapping. The prosecuting witness had told the prosecuting officers of prior conversations with the defendant and consented to their making recordings of this conversation by means of wires attached by the deputy sheriff to the prosecuting witness' telephone receiver. The recording was made without the defendant's knowledge or consent. The court held that this was not the result of wiretapping and was admissible in evidence.

The facts in the instant case differ only from the above cases in that defendants contend that the telephone com-

pany itself knew of the plan of the enforcement officers and arranged and assisted them in the preliminary stages toward making the recordings. The facts in the instant case show that the defendants requested a private line telephone, but were informed by the telephone company that no private line was then available and that they could obtain service only through a party line. The police department then arranged with the telephone company to have a telephone installed on the same party line. An automatic actuator and a tape recorder were attached to the telephone on the party line and recordings were made over a period of some eight days of conversations of the defendants on their telephone on the same party line. The recordings of these conversations were admitted in evidence.

There appear to be no material distinguishing facts in the Williams, Griffith and Barber cases, above cited, from those in the instant case, and it is this court's opinion that these cases are controlling.

The appellants seek to obtain solace in the able dissenting oponion of Judge Rawls in the Barber case, supra. However, it is the duty of the courts to finally determine and to settle close legal questions, even though as often is the case, there are able conflicting views. The Florida courts have held, and rightly so in our opinion, that recordings of telephone conversations made with the consent of one of the parties to the conversation, either over a direct line or by extension, are legal and properly admissible in evidence. Also, that recordings made over a party line, where the conversant must or should know that his conversation can be heard over any of the other party lines, where there has been no direct tapping or invasion of the lines belonging exclusively to the defendant, then recordings made through the party lines are not illegal and are admissible in evidence.

Defendants in this case further object to the introduction in evidence of certain personal property items ob-

tained as results of the search of a residence. It is the contention of the defendants that the search was not executed in accordance with the law. Appellee contends that this objection comes too late as there was no motion to suppress prior to the trial and that it cannot now be raised on appeal, citing in support thereof Robertson v. State, 1927, 94 Fla.770, 114 So. 534, and Moffett v. State, Fla.App.1965, 179 So.2d 408. It does not appear, however, that these cases were called to the attention of the lower court and certain articles of personal property were first admitted in evidence. However, the court later reversed this ruling and excluded these articles from evidence and instructed the jury to disregard them.

It is, therefore, our opinion that under these facts no harmful error has occurred, and the judgment appealed is affirmed.

SMITH, C.J., WALDEN, J., concur.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1967

Tuesday, January 31, 1967

Case No. 35,888

CLYDE FRANKLIN LEE, ET AL.,
Petitioners,

v.

STATE OF FLORIDA,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal, Fourth District of Florida, in said cause bearing date September 21, 1966, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied.

A True Copy
TEST:

/s/ Sid J. White
SID J. WHITE
Clerk Supreme Court

cc: Honorable Thomas Thatcher
Honorable Charles E. Limpus
Messrs. Kirkland, Johnson & Blalock
Honorable William D. Roth

Recieved Feb. 2, 1967, Edward R. Kirkland,
Attorney at Law

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1967

Thursday, February 23, A.D. 1967

Case No. 35,888

CLYDE FRANKLIN LEE, ET AL.,
Petitioners,

v.

STATE OF FLORIDA,
Respondent.

On consideration of the Petition for Rehearing filed by Attorney for Petitioner,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A True Copy,

TEST:
/s/ Sid J. White
SID J. WHITE
Clerk Supreme Court

(I HAVE TODAY MAILED TO THE CLERK OF THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, ORDER OF JANUARY 31, 1967, IN THE ABOVE CAUSE)